

(1893) 05 MAD CK 0003
In the Madras High Court

Vigneswara Sastrulu, by next friend Gundu Sambayya	APPELLANT
Vs	
Devarapalli Bapayya and Another	RESPONDENT

Date of Decision : 04-05-1893

Acts Referred:

Limitation Act, 1963 — Section 8

Citation : (1893) 3 MLJ 216

Judgement

1. The issue sent for trial by our order of 6th December last was ""Is the suit barred by time"" ?

2. The Subordinate Judge has found on this issue in the negative, being of opinion that the suit is saved by the latter part of Section 8 of the

Limitation Act. That section is as follows:-- ""When one of several joint creditors or claimants is under any such disability (i.e., is a minor, or insane,

or an idiot at the time from which the period of limitation is to be reckoned--see Section 7), and when a discharge can be given without the

concurrence of such person, time will run against them all; but when no such discharge can be given, time will not run as against any of them until

one of them becomes capable of giving such discharge without the concurrence of the others.

3. As has been observed in Anando Kishore Doss Bakshi v. Anando Kishore Bose, I. L. R 14 0 50 at p. 53, the latter part of this section applies

only to a case of all the joint creditors or claimants being under a legal disability. The present is not such a case, for it is admitted that 1st plaintiff

was not under any such disability. Then the question resolves itself into this-- whether notwithstanding the fact of one of two brothers of a Hindu

family being capable of instituting a suit to set aside a sale and his omission to do so within the time allowed by the law of Limitations, the fact of the

other brother's minority is sufficient to save the suit from being barred if instituted within the time allowed by Section 7 after minority has ceased.

4. If the Calcutta case above referred to is to be followed in its entirety, this question would have to be answered in the affirmative, for it was there

held that Section 7 of the Limitation Act saved the suit from being barred as against the applicant who had but recently emerged from minority, and

that the remedy as against him was not barred, and he ""being one of the two joint decree-holders"" should be allowed to execute the whole decree,

because as against the other joint decree-holder it was the remedy only that was barred but his right was not extinguished. It has, however, been

held by a Bench of this Court---Muthusami Aiyar and Parker JJ. in Seshan v. Rajagopala, I. L. R 13 M 236 that Section 7 of the Limitation Act

applies only to ""cases in which there is either one decree-holder or he is a minor or in which all the joint decree-holders are minors or labour under

some other disability, but that it does not seem to be intended to apply to cases in which the minor's interest can be protected by joint decree-

holders, who are also interested in [the subject-matter of the decree.]" Such was also the construction placed on the corresponding section of the

English Statute by Lord Kenyon in *Ferry v. Jackson*, 4 T.R 519 and that such was the intention of the framers of the Indian Act is apparent on

reading Sections 7 and 8 together. Section 7 having dealt with the case of the person or persons (all of them) entitled to sue or make an application

being under a legal disability, Section 8 provides (1) that Section 7 will not be applicable where there are joint creditors or claimants capable of

giving a valid discharge, and (2) where all being originally incapable, any one of them becomes capable of giving such discharge.

5. Section 7 of the Limitation Act is therefore not applicable to the present case nor is the latter part of Section 8. There remains then only the first

part of Section 8. For the appellant the words ""when a discharge can be given without the concurrence of such person,"" are referred to as taking

the case out of this section. It is contended that if appellant's brother had instituted a suit during appellant's minority he could not have

compromised the same so as to bind the minor and that consequently the case is one in which discharge could not have been given without the

minor's concurrence. This contention is not of much force. The elder brother could have sued making his younger brother a co-plaintiff, when any

compromise, (if any there were), could only have been made with the leave of the court obtained u/s 462 of the Code of Civil Procedure. The

present case is analogous to that of Surju Prasad Singh v. Khwahish Ali, I. L. R 4 A, 512 in which the suit was held to be barred. To hold

otherwise would be to allow 1st plaintiff to get done for himself indirectly through the 2nd plaintiff that which the Limitation Act forbids 1st plaintiff

from doing directly.

6. We think therefore that the suit must be held to be time barred and on this ground we affirm the Lower Appellate Court's decree dismissing the

suit and direct the appellant to pay the respondent's costs of this appeal.